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E.O. 12958: DECL: 11/19/2019
TAGS: PREL UNSC I2
SUBJECT: DEMARCHE REQUEST - WEAPONS OF MASS DESTRUCTION
(WMD) OPTIONS

Classified By: IO ASSISTANT SECRETARY ESTHER BRIMMER
FOR REASONS 1.4 (B) AND (D)

¶1. (U) This is an action request. Please see paras 2-4.

¶2. (S/REL) Embassy Baghdad is requested, at the ambassadorial level, to demarche the Government of Iraq (GOI) at the highest appropriate level to convey U.S. intention to take action before the end of the year to help Iraq lift the Chapter VII restrictions related to WMD, and outline potential options aimed at achieving this. This discussion is expected to preview the launch of the U.S.-GOI Diplomatic Joint Coordinating Committee (JCC) in December, which will also address issues related to other remaining Chapter VII restrictions. Given the request by the GOI for the WMD-related UN Security Council resolutions (UNSCR) to be lifted as soon as possible, the USG is prepared to seek action at the UN Security Council (UNSC) by February 15 to eliminate all restrictions on Iraq related to its past pursuit of WMD. Any appropriate UNSC action is expected to only address the WMD, missile and civil nuclear related restrictions embodied in UNSC Resolution 687 paragraphs 8, 9, 10, 12 and 13 and Resolution 707 paragraph 3, and will require both high-level engagement with Security Council Members and the GOI's active support in NY and in Security Council Member capitals.

¶3. (S/REL) Embassy Baghdad may draw on the following talking points:

--The United States fully supports the Government of Iraq's efforts to achieve the international standing equal to that which it held prior to the adoption of resolutions subsequent to resolution 661 (1990). We fully understand and agree with your request for urgent UNSC action to lift WMD missile and civil nuclear related restrictions embodied in UNSC Resolution 687 paragraphs 8, 9, 10, 12 and 13 and Resolution 707 paragraph 3.

--In order to lift these restrictions, the UN Security Council will need to pass a resolution. This will be difficult to obtain in December, especially since you are also seeking a Council resolution extending DFI/IAMB arrangements.

--We have considered a range of options and urge you to consider the following options and the potential risks associated with each. We also urge you to take the important and necessary steps to adhere to international non-proliferation norms which will facilitate timely Council action.

--We believe there are three paths the Council could take that could lead to a resolution lifting your WMD restrictions. Each of these options faces significant, but varying degrees of challenges within the Security Council. None of these options is guaranteed to result in a resolution

that lifts your Chapter VII WMD restrictions.

--The first option, which the U.S. recommends and which would cause the least significant delay, is that we would work with the UNSC to issue a Presidential Statement that would highlight the Government of Iraq's commitment to adhere to international non-proliferation norms, and request a determination from the IAEA that Iraq is implementing the measures required by the existing Iraq-IAEA safeguards agreement and that Iraq is fully cooperating with the IAEA, including through provisional application of obligations under an Additional protocol.

--The Presidential statement would also indicate that the UNSC will seek to lift the WMD restrictions in UNSCRs 687 and 707 upon the conclusion by the IAEA that Iraq is both implementing the measures required by its existing Iraq-IAEA safeguards agreement and is fully cooperating with the IAEA.

--As you are probably aware, a Presidential Statement is a formal statement made by the Council President (who rotates monthly) on behalf of the Council. As this Statement requires consensus, every Council Member has the equivalent of a veto, but it carries less weight than a resolution and so is often easier to reach agreement on than a resolution.

--We believe this approach - by linking an IAEA determination to UNSC action - will help the U.S. succeed in making the case to lift restrictions with other Council Members. This is our intent. Following the IAEA's determination that Iraq is implementing its existing safeguards agreement and cooperating with the IAEA, we would seek Council action to lift WMD restrictions. (Note: The IAEA Secretariat could make this determination in a letter or report to the Security Council or, in the absence of that, we would urge the IAEA Board of Governors to adopt such a determination at its March 2010 meeting. End note.)

--A second option would be for us to work with the Council to adopt a resolution by February 15 that would automatically terminate Chapter VII sanctions under UNSCRs 687 and 707 once the IAEA determines Iraq is implementing the measures required by its existing Iraq-IAEA safeguards agreement and is fully cooperating with the IAEA. The draft resolution would highlight the positive steps the GOI has taken, and the commitments to adhere to international non-proliferation norms in the GOI's letter. It would also reference the IAEA's July 2009 statement regarding the GOI's excellent cooperation with the IAEA.

--This option may face significant Council opposition because, although not unprecedented, it would be highly irregular for the Council to make a decision that is contingent on an action outside its sphere of influence. Also, a UN resolution is far more difficult to adopt than a Presidential Statement. Similar to the previous option, under this option, if adopted, we would urge the IAEA to adopt the determination that Iraq is implementing its existing safeguards agreement and is fully cooperating with the IAEA. (Note: As mentioned above, the IAEA Secretariat could make this determination in a letter or report to the Security Council or, in the absence of that, we would urge the IAEA Board of Governors to adopt such a determination at its March 2010 meeting. End note.)

--The final option, by which we would work with you to seek a resolution to terminate restrictions in UNSCRs 687 (Section C) and 707 by February 15 without any need for subsequent action, is by far the most challenging. We would expect this option to face significant Council opposition because Members may be reluctant to lift your WMD restrictions absent a positive determination of compliance from the IAEA. Also, as noted in the previous option, a UN resolution is far more difficult to obtain than a Presidential Statement. In addition, if this were attempted and it did not garner sufficient support to succeed, the failure of this option could lead the Council to the political conclusion that the lifting of WMD sanctions need to wait for the ratification

and implementation of the Additional Protocol.

--To initiate action in the UN Security Council and with the International Atomic Energy Agency, we recommend that you submit a single letter, addressed to both the UNSC President and IAEA Director General, outlining WMD-related steps you have already taken and new steps you are willing to take to adhere to international non-proliferation norms, including forgoing Missile Technology Control Regime (MTCR) Category I missiles. It would markedly strengthen the letter if it also were to note that Iraq will provide the Agency with declarations and access equivalent to that which it would receive were the Additional Protocol in force. This action would not only underscore and expand Iraq's cooperation with the IAEA but it would also demonstrate to the Council your government's commitment to adhere to international non-proliferation norms and greatly improve the prospects for timely Security Council action.

--Action in the Security Council on a matter like this is traditionally initiated by a letter of request sent by the Member state that wants action. Although we note that Security Council action could theoretically be initiated without such a letter, it is highly irregular. Moreover, the absence of a letter would significantly reduce the prospects for Security Council action and lessen Council Members' appreciation for the GOI's demonstrated commitment to adhere to international non-proliferation norms. Absence of a letter would also reduce the chance for a positive reaction by the IAEA about Iraq's cooperation, which is a key factor in potential Council action and in restoring Iraq to its former international standing.

--Prime Minister Maliki agreed to consider sending such a letter to the UNSC in a meeting with Ambassador Rice in Baghdad on October 23. We strongly encourage this action to initiate the Security Council to act on your behalf.

--We will work actively with you to convince the other fourteen UNSC Members that your WMD restrictions should be lifted. It will also be important for you to work through your Missions in New York and Vienna, and in Security Council Member capitals in support of timely and positive Security Council action. Security Council Members will need time to fully research and consider your request, so we urge you to begin these conversations with other Council Members immediately. We will begin our efforts with you as soon as we agree on a way forward.

--In order to seek Security Council action in February, we encourage you to submit a letter to the President of the Security Council and the IAEA Director General as soon as possible. We also look forward to continuing this dialogue in the context of the U.S.-GOI Joint Coordinating Committee next month.

End Talking Points.

¶4. (U) When delivering the points discussed above, Embassy Baghdad is requested to pass the following non-paper presenting a UNSC/IAEA draft letter. A separate email with detailed explanations of the elements of the draft letter will also be sent by ISN to augment your talking points.

Begin elements of draft letter:

(Excellency:)

I am writing to reaffirm the support of the Republic of Iraq for the international non-proliferation regime and its adherence to applicable disarmament and non-proliferation treaties and related international agreements, and to report on additional steps that the Government of Iraq has taken to adhere to international norms of non-proliferation since reporting to the Council in 2008 as requested in UNSCR 1762 (2007). Taking into consideration these previous steps, the further steps that Iraq intends to take in furtherance of its commitment to disarmament and non-proliferation (which

are reported on below), and the Security Council's decision in resolution 1859 (2008) to review all resolutions since the adoption of resolution 661 (1990), the Government of Iraq hereby requests that the United Nations Security Council consider immediately ending the weapons of mass destruction (WMD) and missile related restrictions under resolutions 687 (1991) and 707 (1991). The Government of Iraq looks forward to recognition by the United Nations Security Council that major positive developments have taken place in Iraq, and that the situation in Iraq is fundamentally different from that prevailing at the time of the adoption of these resolutions.

The Government of Iraq has taken a number of measures to adhere to international norms relating to nonproliferation and disarmament, in addition to those practical measures already reported to the Security Council on 29 May 2008 pursuant to paragraph 3 of resolution 1762 (2007). These steps are consistent with Article 9(e) of the Permanent Constitution of Iraq, which states that &The Iraqi Government shall respect and implement Iraq's international obligations regarding the non-proliferation, non-development, non-production and non-utilization of nuclear, chemical and biological weapons, and shall prohibit associated equipment, material, technologies and communication systems for use in the development, manufacture, production and utilization of such weapons.⁸

Iraq has made particular progress on three objectives identified in paragraph 3 of resolution 1762 (2007).

Iraq has completed its accession to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons (Chemical Weapons Convention). Upon deposit of its instrument of accession, Iraq became the 186th State Party to the Chemical Weapons Convention on 12 February 2009.

Iraq signed an Additional Protocol to the Comprehensive Safeguards Agreement of the International Atomic Energy Agency (IAEA) on 9 October 2008. Legislation to bring into force the Additional Protocol is pending with the Council of Representatives, and Iraq remains in close consultation with the IAEA.

As called for in resolution 1762, the National Monitoring Directorate continues to work with other ministries of the Government of Iraq with regard to dual-use controls and on harmonizing Iraqi export legislation with international standards. The National Monitoring Directorate, as the national focal point for implementation of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (ratified by Iraq in 1991), annually undertakes confidence-building measures and submits information to the Implementation Support Unit within the United Nations Office for Disarmament Affairs in Geneva. The National Monitoring Directorate, in coordination with the Ministry of Foreign Affairs and Ministry of Science and Technology, also continues to prepare for Iraq's accession to the Convention on Physical Protection of Nuclear Material.

The Government of Iraq, consistent with its constitution and democratic form of government, is committed to taking additional steps to adhere to non-proliferation and disarmament standards, and to ensure implementation of such standards. The Government of Iraq will:

Ensure that the National Monitoring Directorate will continue to work to establish and enforce comprehensive export controls consistent with international standards, such as those of the Missile Technology Control Regime, Australia Group, Nuclear Suppliers Group, and Wassenaar Arrangement, including transit/transshipment and catch-all controls;

Accede to the Convention on Supplementary Compensation for Nuclear Damage and to the Convention on Nuclear Safety;

Forego Missile Technology Control Regime (MTCR) Category I missiles. Iraq will also take the necessary steps to subscribe to the Hague Code of Conduct against Ballistic Missile Proliferation (HCOC);

Endorse the Global Initiative to Combat Nuclear Terrorism;

Apply the IAEA Code of Conduct on Safety and Security of Radioactive Sources and Related Import-Export Guidance;

Accede to the Joint Conventions on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management;

Provide the International Atomic Energy Agency with declarations and access equivalent to that which it would receive were the Additional Protocol in force, pending its entry into force;

These planned steps further demonstrate and affirm to the international community Iraq's commitment to and support for nonproliferation and disarmament, in accordance with its legal authorities and legislation and consistent with international norms. Iraq will inform the Security Council and concerned bodies, as appropriate, as it makes progress toward achieving these steps.

The Government of Iraq and the people of Iraq are determined to build a stable and peaceful democracy and to play a positive and stabilizing role in the region. We ask for the support and help of the international community in resuming this role and in overcoming the lingering effects of the irresponsible policies of the previous regime.

I ask that the present letter be distributed to the members of the Security Council as soon as possible, with a view towards assisting the Security Council in its deliberations pursuant to resolution 1859 (2008).

End elements of draft letter.

15. (U) Points of Contact: Please direct all comments about this demarche to William Haldeman (IO/UNP), HaldemanWE@state.sgov.gov, (202) 647-7142, Lisa Kenna (NEA/I/POL) KennaLD@state.sgov.gov, (202) 647-7227, or Jody Daniel (ISN/RA) DanielJL@state.sgov.gov, 202-647-9486.
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